

Docket 63823.0102

S/N 10/637,220
Patent

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: CARPENTER, ET AL.
Serial No.: 10/637,220
Filed: August 8, 2003
For: PACKAGING SYSTEM
Examiner: Jose V. Chen
Group Art Unit: 3637

MAIL STOP AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO OFFICE ACTION

This Response is filed in response to the Office Action dated November 10, 2005. Applicant has submitted a check for \$60.00 for an extension of time to file this response within the first month. Applicant believes that this is the correct fee due; however, the Examiner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 50-2225.

The Office Action requires Applicant under 35 U.S.C. §121 to elect a singled disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held allowable. The Office Action assumes that each pallet, support member and corner/wall spacing member in figs. 1-4, fig. 2A, fig. 5B, fig. 5C, fig. 5D, fig. 6, fig. 7, fig. 8A, fig. 8B, fig. 8C, fig. 9A, B, fig. 10A, fig. 10B, fig. 10C, and fig. 10D are specifically different embodiments of the claimed invention.

Applicant provisionally elects to prosecute Figure 7 for which Claims 1-6, 10, 11, 12-14 and 16 read thereon with traverse. However, Applicant respectfully requests reconsideration of the restriction requirement on the following basis:

If a patent application contains “more than a reasonable number of species, the examiner may require restriction of the claims to not more than a reasonable number of species”. 37 C.F.R. §1.146. However, Applicant respectfully argues that the Office Action’s restriction of Applicant’s invention one singular species is unreasonable.

For example, the species as shown in Figure 7 will require the Office to examine twelve claims. However, only 2 additional dependent claims would be need to be examined, if the additionally species shown in Figures 1-4 and Figure 6 were also allowed to be prosecuted in the same application. Additionally, if the species shown in Figures 5a, 5b, 5c were allowed to be prosecuted in addition to Figure 7, only two additional dependent claims would need to be examined. Furthermore, if the species shown in Figures 8A, 8B¹ and 8C² were allowed to be prosecuted in addition to Figure 7, twenty three more claims would need to be examined. However, of the twenty three claims, twelve of them relate to claims covering both the invention disclosed in Figure 7 and Figures 8A, 8B and 8C. If the species as shown in Figures 10A, 10B, 10C and 10D were allowed to be prosecuted in addition to the species as shown in Figure 7, only ten additional claims would need to be examined. Therefore, even though all the species in the above reference application are patentably distinct, it is not unreasonable for the Office to examine more than one species in the above referenced application. Therefore, Applicant respectfully requests that the restriction requirement be withdrawn.

¹ Figure 9A reflects the species as shown in Figure 8B in use.

² Figure 9B reflects the species as shown in Figure 8C in use.

Assuming that the Examiner has been persuaded to withdraw the restriction as to figs. 1-4, fig. 2A, fig. 5B, fig. 5C, fig. 5D, fig. 6, fig. 7, fig. 8A, fig. 8B, fig. 8C, fig. 9A, B, fig. 10A, fig. 10B, fig. 10C, and fig. 10D, the Applicant respectfully request the examination proceed as to all Claims as originally filed.

Should it facilitate allowance of the Application, the Examiner is invited to telephone the undersigned attorney.

Dated: January 4, 2006

Respectfully submitted,

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Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

The undersigned hereby certifies that the following documents:

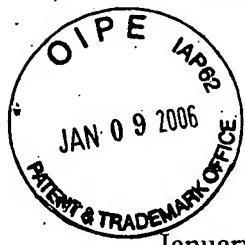
1. Response to Office Action
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relating to the above application, were deposited as "First Class Mail", with sufficient postage thereon, with the United States Postal Service, addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on **January 4, 2006**.

Sherry Colgrave
Mailer

Schultz & Associates, P.C.

ATTORNEYS AND COUNSELORS



January 4, 2006

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Re: U. S. Patent Application No. 10/637,220
for "Packaging System"
Atty. Docket: 63823.0102

Sir:

Enclosed for filing are the following documents:

1. Response to Office Action
2. Check in the amount of \$60.00;
3. Certificate of Mailing;
4. Transmittal Letter (in duplicate)
5. Postcard receipt.

The Commissioner is hereby authorized to charge any underpayment of fees, or credit any overpayment, to Deposit Account No. 50-2225.

Very truly yours,

George "Russ" Schultz

GRS:slc
Enclosures